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# YOUR FARM LEASE CONTRACT

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# YOUR FARM LEASE CONTRACT

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Farm leases (or farm rental contracts) are agreements between landlords and tenants under which rented farms are operated. A good farm lease contains complete, flexible plans for operating a given farm for a given period of time. It records the major management decisions arrived at, such as the crop-rotation plan to be followed, the kinds and numbers of livestock to be kept, and the performance standards set. Its duration, amount of rent to be paid, and how expenses are to be shared all are specified.

A good farm lease reflects knowledge on the part of both landlord and tenant of changes in demand for farm products and of shifts in the price structure. It takes into account ways of saving labor made possible by new

and changing technology and ways of increasing production per acre, per farm animal, and per man.

Does your lease meet the requirements of modern farming? What changes have you made in it since the year you began to rent? Have you given as much thought to improving your leasing agreement as you have to other aspects of your farm operation? Does your leasing arrangement permit the most efficient use of the resources available on your farm? Does it contribute to the improvement of farm renting in your community?

Your lease is important. It affects not only your family income and a valuable farm, but the quantity of the food, fiber, and vegetable oils available to the Nation's consumers as well.

## WHAT A GOOD FARM LEASE DOES

A good farm lease sets forth clearly and completely the arrangement by which the landlord agrees that the tenant shall hold certain rights in the farm under specified conditions for a period of time.

The nature and extent of the rights acquired by the tenant may vary to suit the landlord, the tenant, and the farm. These rights may or may not conform to local custom, but they must be within general rules of law, which vary from State to State. Occasionally, the rights held by the tenant are conditioned by limitations on the

rights held by the landlord. This is true, for example, if the landlord bought the farm under a mortgage or deed of trust or land contract.

Both the landlord and tenant are concerned with the rights each holds under the terms of the lease. They are equally interested in the duties and responsibilities imposed upon each by the provisions of the lease. The establishment of a landlord and tenant relationship automatically confers certain rights and imposes specific responsibilities upon each party. These are what the court would hold to be the

relationship in the absence of provisions to the contrary. The court bases its judgments largely on local custom, common law, previous court decisions, and statutory enactments. So make clear your intentions by specific provisions in the lease.

A good lease provides for consultation between landlord and tenant as to major decisions, but day-to-day operational decisions are mainly the responsibility of the tenant.

A written lease goes a long way toward establishing and maintaining good working relations between landlord and tenant; but no provision should be included in the lease until it is thoroughly understood by both.

You cannot prepare a good written lease unless certain general principles guide your discussion. Follow closely these guidelines in working out your decisions as to what provisions to put in the lease.

Remember that your lease *combines the resources* of two persons. How well these resources are combined will help to determine how much income you will have to divide at the end of the year. Begin with an evaluation of the resources of the two parties. If needed resources are not possessed by either of you, can you arrange to get these items?

Operating a rented farm is usually a *cooperative endeavor*. Landlord and tenant are partners in an economic sense, although legally they do not form a partnership. If you share production of crops or livestock, you are involved in a mutual venture. One of you cannot maintain a large income over a period of time at the expense of the other. A good lease permits each party to receive an equitable return from the resources he supplies.

In your cooperative endeavor, a major objective is to grow a large quan-

tity of good-quality produce—whether crops or livestock. Combine your resources so as to get the largest possible *net income* from the whole farm over a period of years. In order to do this, organize your resources to attain high production at the lowest cost. The net income left to divide between landlord and tenant is affected directly by the costs of production. Costs are reduced when you have sufficient land, labor, and capital, and when these resources are combined effectively in producing things that are needed.

Make your farm plan flexible to meet changing conditions such as those caused by unusual weather, price changes, insect damage, or disease. Your farm lease should allow for some flexibility in farm operation during the year, if necessary. Reconsider your farm plans each year to keep up with changes in technology and prices. You may want to record changes in your farm lease on the Annual Supplement to Farm Lease (Form AD 564).

*Long-term planning* is also essential to good farming, whether by tenants or by owner-operators. On many tenant-operated farms, plans are made on a short-term basis, usually for a year or less. Some of your plans will not require more than a year to be carried out, but many of them may affect farm costs and production 3, 5, or 10 years in the future. A general guide to follow in making a farm plan is to use your combined resources in such a way as to increase production and reduce costs for the *whole farm*. Decide what crops and livestock should be produced and how much of your land, labor, and capital should be used for each crop and livestock enterprise. Your decisions will give you a basis for discussing how expenses and income are to be shared and the duration, or length of term, of the lease.

## THE PROPERTY RIGHTS INVOLVED

Your farm lease involves the transfer of certain rights in the farm from the landlord to the tenant. The landlord does not give up all of his rights. The rights transferred depend upon each situation. Each party should be sure that he knows what rights he holds. Usually, only rights in real estate are involved. But occasionally personal property rights are included in the lease.

### Description of Real Estate

Know exactly what land and buildings make up the farm. How many acres are involved? For what is the land best suited? For what are the buildings best adapted? What buildings need to be added, or what remodeling needs to be done, before they will serve most effectively?

### Reservations

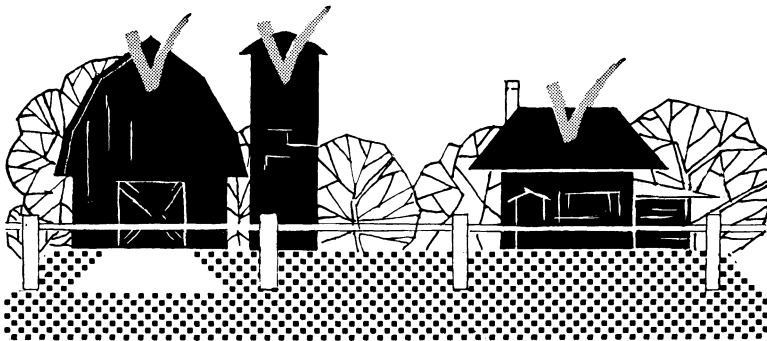
The landlord may want to reserve some of the land or a part of the buildings for his own use. For instance, a reservation may cover the use of a building or part of a building for storage of the landlord's grain or other personal property, land for a family garden, or the privilege of hunting. Therefore, describe the property in-

cluded, indicate its use, and if anyone other than the landlord has the right to exercise this use, include a statement to this effect.

In some parts of the country, the landlord may want to reserve the right to prospect for and develop any and all minerals that may be found on the farm. In this case, he should so specify in the lease. This is not necessary to prevent the tenant from exploiting these resources, for the lease should indicate that the land is to be used only for agricultural and related purposes. The reservation as to minerals would be designed to permit the landlord (or other persons) to enter the farm to explore for, or develop, the resource. Usually, the landlord agrees to reimburse the tenant for damages to crops or livestock because of such activities, and to release the tenant from the provisions of the lease whenever the development of mineral or other deposits interferes materially with farm operations.

### Right of Entry

Ordinarily, the landlord has no right to come on the farm unless this privilege is provided for in the lease. According to our landlord and tenant law, the lease usually gives the tenant



the right to exclude any and all parties except law-enforcement officers from entering upon the farm. Unless a reservation is made in the lease, this right of the tenant is presumed to be complete.

### **Subleasing**

In the absence of any provision about subletting, the usual legal presumption is that the tenant can sublease the farm, or any part thereof, if he so wishes. If the landlord desires that the property shall *not* be sublet, he should so state in the lease. If the tenant wants to sublet all or part of the farm, this provision may well be inserted in the lease.

### **Transfer of Farm**

The tenant may want to be assured of certain safeguards to the rights that he receives. For example, he may want to be sure that if the landlord should sell or otherwise dispose of the farm, the transfer will be subject to the provisions of the lease.

The landlord may agree to give the tenant written notice of specific intention to sell the farm and to permit the tenant to have 60 days in which to arrange to purchase the farm if he is interested in buying it. Unless provided for otherwise in the lease, an outside purchaser does not take possession until the lease has expired.

Attention should be given to what would happen if either or both parties should die, if a creditor should take over the interest of either party, or if their respective responsibilities should be assigned to another party. Under a share lease, the relationship is more or less personal; that is, the situation

might change considerably by assignment or transfer to a new landlord or tenant. Who your landlord or tenant may be is more important in a live-stock-share lease than in a crop-share or crop-share-cash lease.

### **Right To Lease**

The tenant may wish to be assured that the landlord has the right to lease the property. This is especially important if the landlord is not the owner of the property. In any case, the landlord should warrant that he has a right to lease the farm. He agrees that the tenant's possession and other rights under the lease will not be disturbed by anyone. The landlord need not hold title to the property, but he should have, and should affirm that he has, the right to lease the property to the tenant.

### **Additional Land**

The landlord has an interest in how efficiently the tenant will use the farm. This depends partly on whether the tenant uses his labor and machinery on other land. You may want to agree on how much additional land the tenant will operate on or on the amount of time he will spend at activities other than farming. If your farm is too small for efficient operation, you may want to help your tenant obtain additional land to farm.

### **Personal Property**

The lease usually provides that the tenant alone shall furnish the necessary machinery and equipment. But the landlord may want agreement as to the major items of machinery that the tenant is to supply. If the tenant's

machinery is inadequate, indicate that specified operations are to be done with custom work or rented machines.

Usually the landlord furnishes no personal property, but he might furnish a part of the personal property, or some of his or the outgoing tenant's personal property may remain on the

farm when the tenant takes possession. The agreement should be clear as to what personal property, if any, the landlord will furnish, and what rights he reserves in any of his or the outgoing tenant's personal property that may remain on the farm when the incoming tenant takes possession.

## PLANNING LAND USE AND LIVESTOCK PRODUCTION

### Kinds and Acreages of Crops

Decide what crops and the acreages of each are best suited to the farm. How far ahead can you plan? The land will be used most efficiently if your planning is on a long-term basis. Figure out the best combination of crops in light of the things that you cannot control, such as weather and prices. Then consider those you can control to suit your planned production.

Estimate the price you expect to receive for each crop that you sell. If prices for farm products appear to be changing in relation to each other, you may want to shift into or away from certain crops. Or you may want to make year-to-year changes in the acreage of certain crops grown. Many of the year-to-year changes in your agreement can be recorded on the Annual Supplement to Farm Lease (Form

AD 564). However, major or permanent changes in farm plans call for a new lease rather than changes in the existing lease.

Figure out the costs of producing each crop you plan to grow. Do not consider separately the costs that you will bear and those to be paid by the other party. This should be done only after you have arrived at a good crop plan and livestock system.

List the risks involved. How accurately can you estimate prices and yields for each crop? What are the annual variations for each? What are the hazards for each crop from weather, insects, and disease? How much risk do you want to take? Which do you prefer—a fairly stable income from year to year or the possibility of a high return with considerable risk?

In working out your crop rotation, use a worksheet similar to this one.





Use of land	Acres	Production	Price	Income	Selected expenses					
					Fertilizer	Lime	Labor	Machinery	Harvesting	Other
			\$	\$	\$	\$	\$	\$	\$	\$

When you have found the best crop-rotation plan for your farm, think of any changes that should be made because the farm is rented. But do not be tied down to local rental custom. Plan your crop rotation for your farm and the unique circumstances under which it will be operated, and to suit yourselves as landlord and tenant. Summarize your agreements regarding crops in some detail in the lease.

### Fitting Together Crops and Livestock

Decide what kinds and numbers of livestock are best adapted to your

farm—its buildings, fences, water supply, and crops. Take into account also prices, costs of production, and risks. Adjust your cropping system to your livestock and vice versa. You may sell some of the crops; you may buy some of the livestock feed. But balance as well as you can the prospective feed supply with the needs of your livestock. Remember that feed requirements of livestock vary widely. Compare several livestock and crop combinations before you reach a final decision. A worksheet such as the one shown below will help you fit together your crop rotation and livestock system.

Kind of livestock	Number	Feed requirements					Needed facilities			
		Corn	Other grain	Concentrates	Hay	Pasture	Buildings	Fences	Facilities	Water

The system of farming should not be influenced by the kind of rent to be paid. Sound land use and efficient livestock production is the same whether the operator is an owner or a tenant and regardless of the kind of rent to be paid. This is why it is better to decide how the land will be used and what livestock will be kept before discussing the kind and amount of rent.

### **Using a Crop-Share-Cash Lease**

This adaptation of the typical crop-share lease can give you an effective means of providing for livestock production, even if the landlord does not share in the income from livestock. Use the same cropping and livestock systems you would use under a typical livestock-share lease. This will maximize total farm income.

The landlord should not want to consider only what use is made of the land for which share rent is paid. In light of the agreement to pay cash rent for the hay and pasture land, he should prefer a well-balanced system of farming. He may have little interest in some of the farm buildings and the fences unless the tenant pays cash rent for these and similar items. The tenant can provide for production of the necessary feed for his own livestock.

### **Using a Cash Lease**

This form of lease provides that the rent be paid in money rather than products. Under a cash lease, the tenant can grow what crops and raise what livestock he pleases as long as he operates the farm as provided in the lease. It may be well to specify the kinds of crops and livestock to be produced and the acreage and numbers of each. These specifications may be in terms of either a minimum or a maximum, or both.

### **Using a Livestock-Share Lease**

Land use and livestock production can be most easily integrated under a livestock-share lease. Emphasis is focused readily upon total farm production. Both parties are equally interested in all aspects of the total operation. Usually, they divide the income and all variable expenses 50-50. This lease is more complex than some others, for part of the fixed investments are usually owned jointly and many of the fixed operating expenses are shared.

### **Use of Farm-Grown Products in the Home**

Ordinarily, some farm-grown products are consumed in the home by the tenant's family. To the extent that the landlord's resources are used in the production of these products, he should be paid for them. The rent may be in cash or as a share of the products. Livestock products, especially beef, pork, and mutton, can be shared readily, particularly if the animals are slaughtered at a frozen-food locker. Or, the market price can be paid for any animal that the landlord or tenant wants for his own use.

Poultry and eggs can be divided easily, but the farm poultry enterprise is usually reserved for the farm wife. If this arrangement is made, indicate in the lease the maximum size of the enterprise and who pays the costs of production. For small family flocks, the farm-grown grain used as feed ordinarily comes from the tenant's share, except under livestock-share leases where the feed crops are undivided. Here the poultry may be fed from undivided feed but some division of the poultry products may be necessary.

Whatever arrangement is made regarding personal use of farm-grown products, state it clearly in the lease.

## **Buying and Selling**

Provisions regarding the buying and selling of crops and livestock are important. Usually, under a cash lease, the tenant can buy and sell as he pleases. For shared crops, the tenant usually delivers the landlord's share to an agreed-upon place.

A major problem arises only when the crop, livestock, or livestock products are not divided before they are sold. Decide who is responsible for making the sale, what contact he must make with the other party before making a sale, the arrangements regarding payment, and how each party is to be assured that he will receive his share of the income. Specify these in the lease.

Usually crops can be divided easily, but this is not always true of livestock and livestock products. Major sales should have the mutual consent of both landlord and tenant. Keep a record of all minor sales.

Crops are seldom bought by farmers, except for feed purchased under livestock-share leases. These purchases can be made under the general agreement covering other jointly supplied operating items. Make purchases larger than a specified sum only after mutual consultation.

At the end of the lease, the jointly owned livestock and feed may be sold or divided. If divided, either party may make the actual division and then permit the other party to select the half he prefers; this will help to assure careful, well-balanced division.

## **IMPROVING, CONSERVING, AND MAINTAINING THE FARM**

### **Standards of Good Husbandry**

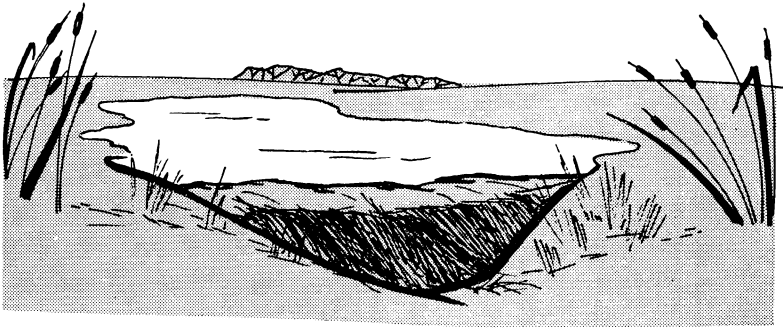
The tenant should maintain the property in as good condition as he found it at the beginning of the lease and he should operate the farm in a husbandlike manner. Discuss the farming practices to be followed, and write the more important ones into the lease.

What standards should be maintained in plowing, seeding, cultivating, and harvesting? When should permanent pasture or meadowland be plowed? Under what conditions will live trees be felled for use? How about

pasturing stalk and stubblefields? How will new seedings of grasses and legumes be protected? How will established pastures be maintained? How can weeds be controlled?

What standards should guide in the breeding, feeding, and watering of livestock? How will livestock diseases be kept to a minimum? What health and sanitation practices will be followed?

The questions about crop and livestock practices should be discussed fully. Some of the results should be written into the lease, although not necessarily in detail.



## Maintaining Buildings and Other Structures

The tenant should assume the responsibility of maintaining the farm buildings. But normal wear and tear eventually makes it necessary to replace many structures. The tenant should be reimbursed if he makes either major repairs or complete replacements.

For example, the tenant should be responsible for keeping a wire fence tight and properly stapled. He may need to add a post or two occasionally. But he should not be expected to replace a large number of posts and wire at his own expense. Likewise, he should *repair* but not *replace* the roof on a building.

Consider most actions that are concerned with improving, conserving, and maintaining the farm as normal, day-to-day farming operations. This is a part of the year's work for the tenant, who does them with his own labor and equipment. Try to maintain a rather constant flow of such activity from year to year.

It may be well to specify that the tenant is to perform all unskilled labor and the landlord is to supply the material and the skilled labor. Take as your guide the practices followed by owner-operators in the community. Would the typical owner-operator do it or would he hire it done? Adjust this to your situation.

If a task calls for specialized skills beyond the tenant's ability, the landlord usually furnishes both labor and materials. If the farm is crop-share-cash rented and the tenant is interested in additional buildings or fences for use by *his* livestock, the landlord may agree to compensate the tenant for specific items if he leaves the farm before he has recovered his investment.

The tenant will need to buy materials with which to make repairs. He should be authorized to make such purchases. But a limit may well be put on the total amount he can spend for this purpose without consulting the landlord.

New structures and buildings should be constructed only after mutual agreement, and they should meet local standards, if any, imposed by regulatory authorities. Particular attention should be given also to standards established by electrical power and insurance companies. The tenant should observe the regulations and provisions in insurance policies intended to reduce or prevent fires.

## Conservation

The landlord may have established previously a conservation program for the farm. Discuss in some detail the place of stripcropping, contouring, and other conservation practices. Consider also the place of conservation

structures such as grass waterways, terraces, open drainage ditches, tile drains, and other such items.

Discuss in detail your conservation measures before you write them into your lease. How can you best reduce soil losses? Gullying should be stopped. Grassed waterways may be needed. Contouring and listing may be applicable on your farm. Terraces may reduce both runoff and soil losses. Stripcropping is beneficial in many areas. Water-retaining structures may be possible under the new small watershed program. How many of these measures apply to your farm? How many should you undertake? How can landlord and tenant work together most effectively? How can you attain your longtime plans most economically? How much should you accomplish each year?

Many things can be done on the farm to prevent or reduce erosion without large expenditures for materials and labor. Pay as much attention to conserving and improving the land as you do to the buildings. Determine how much lime and fertilizer and grass and legume seed are needed. Decide how the forage crops are to be used. Work out a specific plan regarding materials and labor. Utilize as fully as possible the resources available on the farm.

The farm lease should reflect all agreements as to conservation. Some of these provisions should be of a general nature; others should be specific. Provide in the lease for operation and maintenance of old conservation works generally, and new practices to be followed. Spell out in detail any new installations to be made.

The handling or use of manure, straw, cornstalks, and other crop residue is an important soil conservation measure, whether under a crop-share

or a livestock-share lease. Insert in the lease a provision to guarantee the proper use of all crop residue and manure.

Specify the field or fields on which the manure is to be spread. The tenant should agree to spread all of the manure and crop residue that is produced during his last year on the farm less the amount that was unspread when he first occupied the farm.

## **Compensation for Improvements**

Improving, conserving, and maintaining the farm may require substantial expenditures. The landlord may not be in a financial position to meet all of these costs. The tenant may want to use some of his labor and machinery to earn extra income. If so, arrangements may be worked out whereby the tenant will make certain improvements or establish conservation practices or measures.

The problem is one of deciding what to do, how to do it, who will furnish what materials, labor and machinery, how specific contributions will be valued, and what rate of depreciation will be placed on each.

The landlord should agree to reimburse the tenant when the undertaking is completed or when he leaves the farm, if the tenant pays all or a share of the costs. Provisions of this kind are common in farm leases in many sections of the country.

The estimated cost of many conservation measures and the recommended rate of depreciation vary from one section of the country to another. Your county agricultural agent should be able to furnish you with information that can be applied in your own situation. Make the best possible estimates. Minor errors should not be a roadblock to conserving and building up the farm's resources.

Review your conservation program each year. Make any new activities a part of the annual renewal and record them in the space provided on the Annual Supplement to Farm Lease (Form AD 564).

### **Preparation of Land**

An item that is important in many areas is preparation of land for next year's work during the last year of the lease. This is frequently overlooked. Unless an incentive is offered, the tenant may have no reason to prepare the land or to seed cover crops, small grain, or legumes that will yield no income until after he has left the farm.

The lease can provide that the tenant will be reimbursed for any seeding or preparing of land over and above the amount on the farm when he first occupied it. Likewise, the landlord should be reimbursed if the acreage is smaller than at the beginning of the lease, unless the smaller acreage is the result of a government program or forces beyond the tenant's control. The prepared or seeded acreages should be recorded and an agreement reached as to the rate of reimbursement per acre.

### **Removable Improvements**

Another incentive can be offered the tenant to supply small, movable improvements. The agreement could

provide that he has the right to remove such improvements when the lease is terminated. A provision of this kind is needed in many States because the law provides that all such improvements that are attached to the farm become a part of the landlord's property. Permission to remove the improvement should require that it be removed in such a way that the farm will not be injured and that it be removed within a reasonable time after the lease terminates.

### **Compensation for Damages**

If the lease provides that the tenant is to be reimbursed for specified conservation measures, improvements, and seedings, it is fair to provide also that the landlord will be reimbursed for any damages for which the tenant is responsible. This provision will tend to balance the rights and responsibilities in regard to maintenance of the property. It is valuable too because the law on waste leaves the typical provision on waste rather ineffectual. The damage to the property must be severe before the court, under the law, would return a verdict in favor of the landlord. A provision in the lease requiring compensation for damages would add strength to our national conservation program and be an additional safeguard for the particular farm.

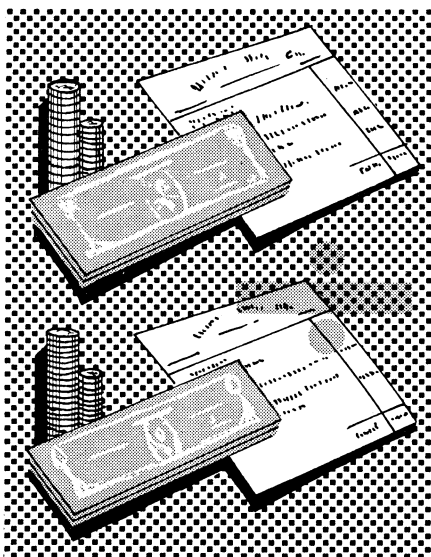
## **SHARING COSTS AND RETURNS**

The proper sharing of costs and returns is essential if—

- The tenant is to be adequately rewarded for his labor and capital inputs.
- The landlord is to receive a return approximate to the productivity of the farm.

- All resources on rented farms are to be used efficiently.

Landlords and tenants often depend too much on local custom in deciding how to share costs and returns. Difficulty arises because custom changes slowly while farming methods



change rapidly. In sharing costs and returns, adequate account often is not taken of new techniques of production, productivity of the land, improvements on the land, the competence of the operator, his supply of machinery and equipment, and conditions that affect annual yields and prices of farm products.

The problem of sharing costs and returns is complicated by the variety of kinds of rent paid. The four most prevalent kinds of rent in our country are cash, crop-share (including share-cropping), crop-share-cash, and live-stock-share. Regardless of the kind of rent to be paid, certain principles can be applied when determining the amount of rent to be paid or the share of farm returns that each party should receive.

## Principles for Determining Rent

The basic principle to follow when determining rent is to share returns in the same proportion as each party contributes to total farm production.

When you have determined what resources are needed and are available for your farm operations, you can begin bargaining on the items each party will supply and on the rental shares or amount of cash rent. Incentives to supply the fixed investments or to pay the fixed operating expenses are not of major concern where the landlord supplies all of the real estate and the tenant supplies the labor and machinery. But the way the variable expenses are handled can have important effects on farm operations, unless certain incentive conditions are met in regard to the sharing of variable expenses and of farm returns. If these incentive conditions are met, whatever is most profitable for the farm as a whole will also be most profitable for both the landlord and the tenant. The conditions are as follows:

1. *The variable costs should be shared in the same proportion as the product is shared.* To illustrate, on the average, \$3.00 worth of insecticide, the recommended amount, will increase net income by \$5.00. Usually the tenant furnishes the insecticide. Suppose you use a crop-share lease and divide the crops 50-50. From the \$3.00 spent by the tenant for insecticide, landlord and tenant will receive \$2.50 each. This is a net gain for the landlord, but it decreases the tenant's net income by \$0.50.

Under this arrangement, the tenant has no incentive to use the amount of insecticide recommended. But if landlord and tenant were to divide the cost of the insecticide in the same proportion as the crop, each furnishing \$1.50 worth, each would have a net return of \$1.00 from its use.

2. *The returns on each enterprise should be shared in the same proportion.* For example, if the rent on one

crop is one-half and on another one-fourth of the crop, the tenant will have an incentive to devote more of the farm resources to the crop for which he pays the lowest rent. The landlord would prefer more of the resources devoted to the crop for which he receives the most rent. This may not only reduce the income to the landlord or to the tenant but also for the farm as a whole.

3. *The returns on each investment should accrue to its contributor even though some costs and returns are widely separated in time.* This presents no problem to most landlords. A landlord's investment will yield returns either in the form of increased annual income or in the larger price he will receive for the farm if he should sell.

The tenant, however, will have no incentive to make expenditures that may be expected to yield a substantial part of their return after he has left the farm. This problem cannot be solved by juggling the sharing of costs and returns.

Its solution lies in an agreement that the landlord will compensate the tenant for the unused value of such investments when the tenant leaves the farm. A compensation provision in the lease should supply the tenant with the incentive to incur costs that will yield returns beyond the term of his assured occupancy of the farm. Also, the share of the cost needs to be the same as the share of the returns, to make this work effectively.

### **Establishing the Value of Contributions**

How should the annual value to the business of fixed contributions be determined? These annual contribu-

tions involve such fixed investments as land and buildings, machinery and equipment, and breeding livestock. Included also are fixed operating expenses such as depreciation, repairs, management, and labor.

The fixed capital investments can be valued in terms of current market prices if these prices are an accurate measure of the value of such investments for farming purposes. The annual value of each investment can be estimated by applying a reasonable rate of return to the total value of the investment.

The value of the fixed operating expenses should be their actual cost or what they would be worth in the market. Information is available on average rates of depreciation for most important items. Labor and management costs should be determined by what comparable services would cost if they were employed.

Agreement should be reached on which party will furnish each item of fixed investments and expenses. Usually the landlord supplies the land and buildings, stands depreciation on them, and pays for the repairs on his investments. He may or may not supply machinery, depending on the kind and amount of machinery required. The tenant supplies his labor and management, machinery and equipment including depreciation, and pays for repairs on his investment. Investments in breeding herds and livestock equipment depend largely upon the kind of rent paid.

The variable expenses should be handled so as to meet the incentive conditions outlined above. Under cash rent, this usually means that the tenant pays all variable operating expenses. Under share rent *each* variable expense would be divided in the same proportion as is the product.



## DURATION OR TERM OF LEASE

The term or duration of your lease is important. It includes the beginning date of the lease, notice of termination, how the lease may be renewed, and how it may be canceled. Resolve these matters during the lease-making process.

### Beginning Date

The dates on which leases begin and end vary widely in different parts of the country. Local custom and type of farming are important in this respect. Within a limited area, it is well for all tenants to move on the same date. No dwellings are left unoccupied for an extended period, and no tenant is left without a place to shelter his family, livestock, and supplies.

In the Midwest, the typical "moving date" is March 1; in the South, it is January 1. These dates were established years ago, when conditions were different. Considering new developments, are they the best dates? You may need to adjust the beginning date to suit your individual situation.

### Notice of Termination

Notice that the lease is to be terminated or renewed should be given well before the end of the crop year. Early action is particularly important

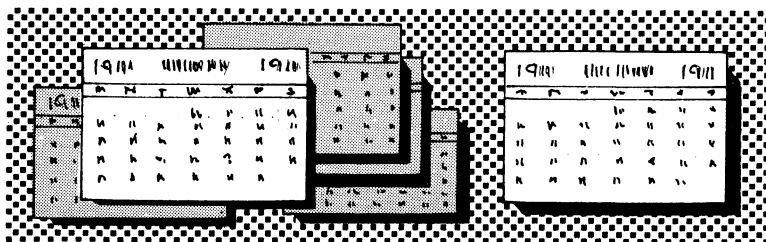
if you operate your farm under a long-term plan. It is expensive to change farms or tenants on short notice. This is especially true in certain kinds of livestock farming.

If you have a long-term lease, you may want to provide that, under specified conditions, the lease may be canceled at the end of a crop year through written notice of termination by either party. Cancellation may be desirable in event of the death, incapacity, or bankruptcy of either landlord or tenant. When possible, provide for notice of cancellation well before the end of the lease year.

### One-Year Lease

Many farm leases are drawn for one crop year. Ordinarily, termination is automatic at the end of 12 months. Neither party is required to notify the other well in advance of the end of the lease year of his intention to terminate the relationship. Other leases are for 1 year, but they continue automatically to the next year unless one party gives notice of termination as required by law.

A straight 1-year lease offers little security to either landlord or tenant, but it does provide maximum flexibility. Neither is tied down for more than 12 months. But effective long-time plans for crop and livestock enterprises, soil and water conservation



structures, construction and improvement of buildings and fences, and liming and fertilization are made with difficulty under a 1-year lease. Except under unusual circumstances, it is well to avoid 1-year leases that terminate automatically.

### **Long-Term Lease**

Long-term leases may run for 3, 5, 10, or 15 years, terminating automatically at the end of the specified period.

Objections frequently raised to long-term leases include:

- If cash rent is paid, changes in prices and production conditions may throw farm income out of line with the rent stated in the lease. But sliding-scale cash rent will reduce the effect of this shortcoming.
- The landlord and tenant may know little about each other and may hesitate at first to make a long-term contract.
- Conditions might arise that would make it advantageous for either party to discontinue the arrangement.

Neither long-term nor short-term leases appear to fit most landlords and tenants. But two intermediate types of arrangements are available. One is based on a short-term lease, the other on a long-term lease.

### **Automatic Renewable Short-Term Lease**

Many advantages of a stable and secure tenure can be obtained, at least partly, under a lease of this kind. Provide that it will continue automatically from year to year in the absence of adequate notice of termination. Adjustments can be made in the lease each year to insure flexibility. State that notice of termination is to be given in writing at least 4 to 6 months before the beginning of the next lease year.

The usual legal minimum requirements for notice of termination of leases of various kinds are too short for effective leasing provisions.

### **Long-Term Cancelable Lease**

Long-term leases with a provision for cancellation under specified circumstances may be used when long-term noncancelable leases are not suited to the individual circumstances. The reasons for cancellation may be specific or general. Indicate how long before the lease year ends the notice of termination is to be given. Provide also that the lease is renewable for another long-term period, unless notice is given a specified number of months before the end of the lease year.

### **Compensation Upon Cancellation**

Provide in your long-term cancelable lease that either party will compensate the other for losses incurred if the lease is terminated before the end of the term agreed upon. Specify the amount of the compensation or a means of determining it.

In the absence of adequate knowledge as to how the other party will perform, it may be well to begin with a 1-year lease. If the first year's experience is satisfactory, change the lease to provide for a more stable and secure occupancy.

### **Safeguards at Termination**

A lease for a fixed period of time usually terminates automatically at the end of the stated period. If you use such a lease, take action as early as possible to assure that your wishes will be effective with the least possible difficulty. Do not leave the tenant in position to hold over and claim that

the lease was renewed. Do not lead the landlord to expect the arrangement to continue and then leave at the last moment. Be sure that you meet the legal requirements in your State, if any, for terminating your fixed-term lease.

If you should have a relationship that is described at law as a tenancy at sufferance or a tenancy at will, conform to specific law in terminating the relationship. If you are in doubt as to the law of your State in regard to termination, consult a lawyer.

## MISCELLANEOUS PROVISIONS

### Denial of Partnership

Your lease agreement should neither create nor imply a partnership or an employer-employee relationship. It should create only the relationship of landlord and tenant.

It is often important to keep the relationship from being interpreted as a partnership. Partners usually have joint liabilities for debts created and for injuries to persons and damages to property in the ordinary course of business operations.

The provisions of some leases, particularly livestock-share agreements, suggest partnerships. Insert a provision in your lease disavowing a partnership. But this provision will not safeguard you completely. The courts have held that other provisions of the agreement itself and the working relationship during its life between the two parties are important criteria.

To be certain that you have a lease and not a partnership—

- Be cautious about a firm name, that is, do not have a firm name or the names of both parties on a truck, the mailbox, the barn, or stationery.

- Do not give both parties equal voice in the day-to-day management of the business.

- Make certain that neither party can create a debt in the name of the firm.

- Do not have a firm bank account and be careful about a joint bank account.

- Be cautious about carrying insurance on livestock, crops, and supplies in the names of both parties.

- Do not carry out day-to-day operations as partners would.

- Do not do things that would lead a third party to believe that you are partners.

### Cooperation With Government Programs

During the last 2 decades, cooperation under various government programs has become important for many farmers.

Discuss these programs from the viewpoint of—

- Effect on income from your farm, considering both long-term and short-term effects.

- Changes in sharing of expense, if any appear to be advisable.
- Division of cash income according to participation, and changes in sharing of income, if any should be made.

Include the agreement on these items in the lease.

## **Debts and Injuries**

Safeguard your position in regard to debts and injuries. A provision on this is binding as between landlord and tenant. It should indicate to what extent, if any, either party may create a debt on the other, or deny either party any right to create a debt against the other. Indicate who is responsible for damages from accidents and injuries to others or their property.

## **Farm Records**

You may want to provide for adequate and accurate farm records. They are essential to the successful operation of a modern farm.

If cash rent is paid, the tenant's records are not of appropriate concern to the landlord. Under a live-stock-share lease, farm records are of interest to both parties. The keeping of records is optional under a crop-share-cash lease.

Ordinarily, it is the duty of the tenant to keep the records. The accounts should list all purchases and sales for the farm business, should include an inventory of all property, whether jointly or personally owned, and should identify the ownership of each item.

Records are useful in filling out income-tax returns, making financial statements, or dissolving the relationship. A production record will provide a history of yields, fertilizer ap-

plications, breeding dates, and other information for later use in planning the farm business.

Agree upon what records will be kept, who will keep them, and that they will be accessible to each party. A farm account book, adapted to your needs, can usually be obtained from your county agricultural agent's office. Monthly or quarterly and annual reports may be specified.

## **Arbitration of Differences**

Agreement to arbitration of differences that cannot be resolved easily through discussion by landlord and tenant would reduce the likelihood of differences arising. It would encourage each party to take a reasonable and conciliatory attitude.

If a disagreement arises that cannot be settled by mutual discussion, leave the decision to an arbitration committee composed of three persons—one chosen by the tenant, one by the landlord, and the third by the other two members. None of these three persons should be related to either contracting party or have an interest directly or indirectly, personally or otherwise, in the questions to be decided. The third member should have some background as an appraiser or farm manager, or in related work. Arbitration is usually preferable to court action. Costs of litigation are high, and court procedures are not well adapted to solving most farm-leasing problems.

Usually, if both parties submit their disputes to arbitration, the awards are held to be valid and are enforceable. If there is indication of fraud in arriving at the decision, an appeal can be made. Except for questions of law, agree that the decision of the arbitrators will be final and binding upon both landlord and tenant unless the sum ex-

ceeds an amount that is specified in the lease.

### **Landlord's Insurance**

The two parties may want to consider a provision that would require

the landlord to carry with a reputable insurance company comprehensive coverage insurance on all major farm buildings (including the dwelling) and to use immediately the income therefrom to replace or repair such buildings in case of loss.



Growth Through Agricultural Progress

## **FARM LEASE PUBLICATIONS**

Other publications on farm leases available from the U.S. Department of Agriculture, Washington 25, D.C., are:

- Your Farm Renting Problem, Farmers' Bulletin 2161.
- Your Farm Rent Determination Problem, Farmers' Bulletin 2162.
- Your Crop-Share-Cash Farm Lease, Miscellaneous Publication 838.
- Your Cash Farm Lease, Miscellaneous Publication 836.
- Your Livestock-Share Farm Lease, Miscellaneous Publication 837.
- Your Farm Lease Checklist, Farmers' Bulletin 2163.

The following farm lease forms may be obtained from your County Agricultural Agent or from Correspondence and Publications Distribution, Agricultural Research Service, U.S. Department of Agriculture, Washington 25, D.C.

- Crop-Share-Cash Farm Lease (Form AD 561).
- Cash Farm Lease (Form AD 562).
- Livestock-Share Farm Lease (Form AD 563).
- Annual Supplement to Farm Lease (Form AD 564).

The bulletins supersede Farmers' Bulletin 1969, "Better Farm Leases," and Miscellaneous Publication 627, "Your Farm Lease." The lease forms supersede "Standard Farm Lease" (Form Agri.-1) and "Annual Supplement to Standard Farm Lease" (Form Agri.-3).